Nebraska City, N. T., Jan. 5th, 1858.

Hon. Thomas A. Hendricks—Commissioner of the General Land Office:

Sir:—

In consideration that my rights are to be adjucated by your Honor—I beg leave to submit the accompanying brief and ask its careful perusal by your Honor. For the reason the case is new and novel in its character, and is to settle the pretended claims of Mail Contractors on North and South lines West of the Mississippi river, under the act of the 3d of March, 1855.

Respectfully your obd't serv't,

MILTON SWALLY.

By Att'y I. L. Gibbs.

MILTON SWALLY, vs. C. W. PIERCE, SAMUEL COX.

The case of Milton Swally against the Mail Contractor, C. W. Pierce and Samuel Cox, who is the automaton of Pierce, was tried before the Land Office on the 29th day of December, 1857, and decided by the Register and Receiver, *conditionally* on the 4th day of January, 1858, as will more fully appear from a letter of the Register and Receiver to your Honor of the 5th inst.

The evidence is voluminous and a great deal of it irrelevant, for the defendant Pierce aided and assisted by a *combination* of wealthy speculators, has tried by every shift, expedient and subterfuge to mystify the rights and prejudice the claims of Milton Swolly, who is an honest and *bonafide* settler on the north east quarter of section number thirty-one, (31) in township number nine (9) of range number fourteen (14) east, under the act of the fourth of September, 1841.

As the determination of this case is to settle whether this powerful combination of speculators, under the name of Mail Contractors, are to have the right to appropriate thousands upon thousands of acres of the best Government lands in the Territories of Nebraska and Kansas to their own use without authority of law, they have and will move the Heavens and the earth by virtue of their money to induce your Honor to abrogate and annul the circular of the 9th day of September, 1857—or explain the same away and let them deprive honest settlers of their lands. Already these pretended claimants under the act of the 3d of March, A. D. 1855, have sent Dr. Benjamin P. Rankin to Washington City for no other purpose than to misrepresent to your Honor the facts, as can be demonstrated to the satisfaction of any unprejudiced mind. At this time a delegation hired by these pretended claimants are equiped and ready to leave for Washington City for the *avowed* purpose of operating upon your Honor by their own ex parte representations and the influence they can bring to bear by virtue of their wealth and numbers.

I propose to demonstrate three propositions as conclusively as facts and circumstances can prove anything:—

1st. That the said C. W. Pierce who is pretending to claim the land in dispute, by virtue of having selected the same as a Mail Station on route No. 15000, is the mere cats-paw and tool of Nuckolls, President of the Platte Valley Bank, H. P. Bennet, Esq., and Dr. B. P. Rankin, all of whom have no higher aspirations than the acquisition of the public lands, it matters not at whose expense or how—and that Pierce has no claim whatever to Mail Stations on route 15000.

2nd. That mail route No. 15000 is a north and south line—commencing at Nebraska City and terminating at Fort Calhoun, and is not in any *proper* sense a link in any mail route from the Mississippi river running west, as is pretended by said Pierce and his speculating coadjutors—and that the said Pierce by the act of third of March, 1855, and a circular issued by your Honor on the 9th day of September, 1857—is precluded from setting up a claim to it—that the said Pierce had surrendered all his pretended claims until Dr. B. P. Rankin and other influence induced your Honor to write a letter saying that if a north and south line west of the Mississippi river was a link in a mail route running west, the contractor would be entitled to mail pre-emptions under the Act of 1855.

3d. That the said Pierce and his speculating adherents under the cognomen of Mail Contractors and their hired tools have destroyed the houses and improvements made by Swolly on the tract in dispute, and that Swolly notwithstanding all their united and combined efforts to thwart him has settled and improved the north east quarter of section number thirty-one (31) in township number nine (9) of range number fourteen (14) east, under the act of the 4th of September, 1841—and is entitled in law and equity to said tract.

It is admitted that C. W. Pierce was contractor for conveying the mail on route No. 15000—which was a north and south line begining at Nebraska City and ending at Fort Calhoun—being a distance of seventy-five miles. I need not here remind your Honor that C. W. Pierce is precluded from mail pre-emptions on this route by virtue of the act of the 3d of March, 1855. Said act interprets and explains itself by the last clause of the 1st section, which is in these words:—"But no such pre-emption right shall extend to any pass in a mountain or other defile;" thus unerringly designating the intention of Congress to grant pre-emptive rights to mail contractors, only who should carry western mails—west of the Mississippi river. That your Honor has already given this *interpretation* and *construction* to the Act by circular No. dated 9th day of September, 1857.

But it is contended now, for the first time, that this north and south mail route No. 15000 is a link in the mail route from Burlington and other points on the Mississippi river running west. This view was not thought of by the genius of this combination of speculators until suggested by your Honor to B. P. Rankin, and the idea of mail route No. 15000 being a link in within the meaning of your Honor is superlatively absurd as I will show. But the Register and Receiver of this local Office upon a *private letter addressed by your Honor to John B. Bennet, Esq.*, have decided *hypothetically*, that if such be the fact the claimant, C. W. Pierce, is entitled to Walnut Creek Station, which embraces the tract claimed by Swolly. But mark you, the Register and Receiver *do not say that route No. 15 000 is a link—a connecting link* in any mail route running west. They leave the fact to be determined by your Honor. That mail route No, 15,000 is not a link in any mail route running from east to west, I think is clear and indisputable. For it begins at Nebraska City and ends at Fort Calhoun, running north and south a distance of seventy-five miles. For if it is a link in any mail route from east to west, it is evident that every mail route west of the Mississippi river running north and south, and in fact every mail route in the United States is a *link*. This proposition needs only to be stated to show its own absurdity. What does your Honor mean by a link in a mail route from east to west? I suppose that your Honor never dreamed of meaning that every north and south mail route, which might chance to carry mail matter which subsequently went west by the western mails, was a link, and a connecting link in the route from east to west. If so why did Congress insert the last clause in the first section of the Act of the 3d of March, 1855? If so why did your Honor issue a circular on the 9th day of Sept., 1857—excluding mail contractors west of the Mississippi, on lines north and south, from mail pre-emptions? There is no escape. For there is no exception, if mail route No. 15,000 is a link within the meaning of your Honor, and there was no meaning in the circular of your Honor of the 9th of Sept. 1857, and no *necessity for it*—every route in the world would be a link and every mail contractor west of the Mississippi river would be entitled to 640 acres on every mail route according to the provisions of the Act of 1855.

The defendant Pierce introduced one witness, S. F. Nuckolls before alluded to, to prove that route No. 15,000 was a link in the mail route from Burlington, on the Mississippi river west. But I apprehend your Honor will look at his evidence and weigh it, as it *deserves to be looked at and weighed*. From the first to the last word in his deposition the character, feeling, interest and prejudice of this man, is so apparent that a child could see the powerful motives that were operating upon him. He states his opinions freely and without reserve. He says that he sold the claim in dispute to C. W. Pierce for $5,000, and took his note without security. What right has Nuckolls, although President of the Platte Valley Bank, to sell Government lands? Has he any exclusive right and claim to the Government domain? Can any sane man doubt for a moment Nuckoll's interest in the determination of this controversy when the circumstances and facts developed by himself are considered. Nuckolls knew at the time of the pretended sale and knows now, that C. W. Pierce is not worth a bawbee, and never will be unless he gets the Mail Stations—*the pretended Mail Stations on route No.* 15,000. But take every fact testified to by S. F. Nuckolls as true, and it amounts to nothing in law, for he only gives his opinion. Fortunately, however, for truth and justice, the parol evidence of S. F. Nuckolls is not the best evidence of the fact whether route No. 15,000 is or is not a link in a route from east to west. The contract officer of the Post Office Department of the Government will put to shame and confusion all such witnesses.

To counteract the effect of S. F. Nuckolls' testimony—if it can have any effect upon your Honor—I hereto attach a copy of a letter addressed to the Post Master at this place, and his answer to the interrogatories as an officer of the Government.

[Copy.]

Nebraska City, N. T., January 5th, 1858.

George G. Gillette, Esq., P. M. Nebraska City.

Dear Sir:—You will please be kind enough to answer the following interogations:

1st. How many Mail Routes are there running North and South, west of Missouri river from Nebraska city, N. T.?

2nd. What are the numbers of the Routes and their reputed lengths?

3rd. How many Mails have been regularly carried North and South from and back to Nebraska City?

4th. Have the Contractors each generally carried their respective Mails according to their contracts?

5th. Is the mail Route, No. 15,000 from Nebraska City North to Fort Calhoun a link in any Eastern or Western Mail Route to and from Nebraska City, and does the Eastern Mail from Burlington and other points on the Mississippi River come generally to Council Bluffs, thence to Omaha, Nebraska Territory and thence on Mail Route No. 15,000 to Nebraska City and thence go to Fort Kearney West, and do you send your Eastern Mail matter on Route No. 15,000 to Omaha City, N. T.?

Respectfully your
Obedient servant,

(Signed.) MILTON SWALLY.

Post Office,
Nebraska City, N. T., Jan. 5th, 1858.

Sir:—Your favor of the 5th inst. was received to-day asking certain interogations in reply, I have to state to your first inquiry, That there are three Mail Routes North from Nebraska City West of the Missouri River (one of these Routes however was discontinued about the 3rd inst., to-wit: No. 15 000 by order of the Department at Washington) and there is one South running from Nebraska City to Nemaha Agency, which is Route No. 15,002.

2nd inquiry.—The numbers of the Routes running North from this point are No. 15 000 from Nebraska City to Fort Calhoun—and No. 15 002 from Nemaha Agency to Nioway River—and Route No 15,037, from Plattsmouth by Wyoming to Nebraska City.

3rd inquiry.—There has been a tri-weekly Mail from this Office to Omaha City. The Mail has been carried by contractor on Route No. 15 002, and I have never delivered any Mail to contractor on Route No. 15,000 unless the contractor on Route No. 15.002 carried the Mail for the contractor on Route No. 15 000, I think one of these contractors has carried the Mail for both.

4th inquiry.—I cannot state whether the contractors on the Routes north as specified have carried their respective Mails according to contract for I don't know what their contracts are—except that I received a letter from Washington on the 28th of October, requiring that the Mail should be carried on Route No. 15,000 weekly, leaving this office on Tuesday of each week for Fort Calhoun. But my monthly register will show that the Mail was carried tri-weekly on Route No. 15,000—but I was mistaken and did not report on Route No. 15,002 except from this place South.

5th inquiry.—All the Eastern Mail matter arrives at this office by Mail Route No. 15009 running from this point to Sidney, Iowa—and I send all our Mail matter for the East by the same Route and the Mail arriving at this place from the East for Fort Kearney has been sent by a Mail Route running directly to Fort Kearney, until I received orders to forward them by Marysville, Kansas Territory.

Respectfully, yours &c.,

GEORGE G. GILLETTE,
Post Master.

To—
I. L. Gibbs, Esq., Attorney for Swally.

Now the facts developed by the answer of the Postmaster shows that there are three mail routes running North from Nebraska City, to-wit: route No 15,000, *which has been discontinued by the Government*; yes discontinued before the perpetration of any fraud upon the government by false witnesses—and it may be discontinued because the government regarded it as a nuisance—and shall the contractor on a mail route running north and south be permitted under the act of 3rd of March, 1855, to take six hundred and forty acres of the best agricultural land in the Territory, every twenty miles, when the route has been abated as a nuisance?—and that too when the law and your Honor's circular precludes and excludes *all* contractors on routes north and south from pre-emptive rights under said act? Surely perjury and the influence which can be bought by money, can never accomplish an iniquity like this—route No 15,002, and route No 15,039. If the contractor on route No 15,000 is entitled to a pre-emptive right to 640 acres every twenty miles on said route, so are the other contractors, and thus we behold a stupendous fraud perpetrated on the Government, and 1920 acres of land taken in sight of one village by contractors on north and south lines, to say nothing of Fort Kearney and Western mail routes.

Again, the letter of the Postmaster discloses the fact—*the startling fact*, that *one* of the *contractors* on this northern route from this place has *carried* the *mail* for *both*. See answer of Postmaster to 3d inquiry

That "nearly all the eastern mail matter arrives at this office by mail route No 15 009, running from this point to Sidney, Iowa"—mark you, it does not come to this place as Nuckolls would have your Honor believe, to Council Bluffs, thence to Omaha, thence by mail route No 15,000 to this place, thence west—nor does the eastern mail matter go from *here* on route 15,000 to Omaha City, N T, thence to Council Bluffs on east—what does all this prove? It demonstrates clearly that mail route No 15.000 is not a link in any route from east to west, and not being a link, Pierce is not entitled to a mail pre-emption on said route.

But independent of all this, if it had been a link, as is contended by Pierce; the 6th Section of your Honor's circular of the 9th of Sept A D 1857, would debar him from seting up any claim to the same, because the contract on route 15,000 has been annulled—section alluded to is in these words:—"Upon unoffered land the claim must be proved up and paid for during the existence of the contract, and before the day fixed by the President for the public sale of the land, otherwise any right which the party may have had *will be forfeited*."

The contract was discontinued and anoulled on the 3d inst. before the contractor on route No 15,000 had "proved up and paid for said land, during the existance of the contract" nor has the contractor ever attempted to do so, in good faith, but is now attempting only to prevent Swally, the rightful claimant from doing so.

In support of the last clause of the second proposition, I call your Honor's attention to a letter addressed by your Honor dated "General Land Office, November 24th, 1857, to John B Bennet, Esq. Nebraska City, N T." Having shown that the pretended claim of C W Pierce has its foundation in fraud and bad faith, and is at *war* with a fair and legitimate construction of the act of the 3d of March, 1855, and the instruction and construction of said act in your circular of the 9th of September 1857—there remains but one other point to be noticed, and this has been decided by the Register and Receiver of this local land office, and hence will not require a very minute and critical examination by me. Has Milton Swally brought himself within the provisions of the act of the 4th of Sept, 1841? The Register and Receiver say that if C W Pierce is not entitled to the land in dispute as a mail station, Swolly is, (under the act of the 4th of Sept 1841,) we might *here* risk the whole case, because your Honor and the universal practice of the General Land Office, has been to leave the question of who was the first *bona fide* occupant to the decision of the Local Office. But I will review hastily the evidence in support of the right and claim of Swally:

Johnathan Swally the first witness on behalf of Milton Swally, testifies that Milton Swally built a dwelling house on the N E quarter of section number thirty one, in township number nine, of range number fourteen east, in accordance with his declaratory statement; and that Swolly and his family have inhabited the tract to the present time. The evidence of Rufus Gale, David M Martin, A Tipton, John Starks and Williamson, corroborates that of Johnathan Swally, and the whole testimony shows that Pierce and his speculating friends exhibited an uneasiness and restlessness which points unerringly to their consciousness of the invalidity of the claim of C W Pierce, and accounts for their tearing down the houses of Swally and the other wrongs they did to him as is fairly deducible from the testimony in the cause.

In conclusion permit me to express the sanguine hope that your Honor will discharge the high and honorable duty which devolves upon your Honor as the Commissioner of the General Land Office department of the government, by adhering to the construction given to the act of 3d of March, 1855, in your circular of the 9th of September 1857. That your Honor may be able to resist all the influence which a thoroughly organized band of speculators may bring to bear in the premises against an humble citizen of the United States claiming the benefit of the act of the 4th of Sept 1841. The organization now operating against me, have grown vain as well as rich by their unparalleled success in the past, hence their energy now.

They would press on now even though the facts should stand out in bold and prominent relief—mountain high—proving them to be in the wrong—as yet they have known no such word as fail. But if I am not mistaken in your Honor, I apprehend in the revolution of a few months; the joy that will thrill the bosom of many an honest squatter; will cause them to exclaim in the paroxism of gratification—our homes are safe from the ruthless invader and speculator who tried to steal them in the costume of a mail contractor.* And then the honest settler in the sympathy of his nature will turn to the foul clan and exclaim "How art thou fallen, oh Lucifer, son of the morning."

The monster genius of speculation and fraud has stood erect on the line dividing the Territories since their organization and has extended one hand over Nebraska and the other over Kansas Territories, grasping at political power and the landed interest of the country, infecting, corrupting and poisoning the political and social atmosphere of both. It has been the author of conspiracy, murder and violence, and the fountain of almost every crime in the historical progress of both Territories. Your Honor ere this must have been apprised of the stupendous and gigantic schemes of this monster—Proteus like, he assumes at one time, the dress of a north and south mail line contractor—at another that of a proprietor of a paper town on public lands—and then he puts on the humble habiliments of a squatter and commits perjury to avail himself of the act of the 4th of Sept 1841. But all for the same object, the fraudulent acquisition of the government domain—it matters not at whose expense or how.

Let me again express the hope that the vigilant and honest eye of your Honor may see and condemn the attempted fraud of C W Pierce & Co.

I trust your Honor will take this case under advisement at an early day and determine it according to the law and facts.

Your Obedient Servant,

MILTON SWALLY.

By Att'y I. L. Gibbs.

* Almost every quarter section now claimed by North and South Mail Line Contractors is actually occupied by "*bona fide*" settlers—many of whom settled long before the contractors pretended to claim a pre-emptive right under the act of the 3d of March, 1855.